SUPREME COURT, U. S.

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

No. 48

October Term, 1967

MINNIE E. NASH, *Petitioner*

v.

FLORIDA INDUSTRIAL COMMISSION, THE STANLEY WORKS AND STANLEY BUILDING SPECIALTIES, *Respondents*

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

BRIEF FOR RESPONDENTS, THE STANLEY WORKS AND STANLEY BUILDING SPECIALTIES

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ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

BRIEF FOR RESPONDENTS, THE STANLEY WORKS AND STANLEY BUILDING SPECIALTIES

STATEMENT OF THE CASE

The Stanley Works and Stanley Building Specialties, hereinafter referred to as "Respondents", accept the presentation of Petitioner in her brief of those sections dealing

with OPINIONS BELOW, JURISDICTION, QUESTIONS PRESENTED and CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED. Respondents further adopt Petitioner's STATEMENT OF THE CASE except as indicated below.

On April 6, 1965, the union involved filed on behalf of Petitioner unfair labor practice charges against Respondents claiming that Respondents' refusal to allow some 50 striking employees, including Petitioner, to return to work was in violation of the National Labor Relations Act, as amended. These charges were pending before and unresolved by the National Labor Relations Board at all material times (R.12,19).

On April 14, Petitioner was recalled to work and then subsequently was laid off for economic reasons on May 14, 1965. On May 17, 1965, Petitioner applied for unemployment compensation benefits under Florida Statutes, Chapter 443 (R.1,17).

In addition to commencing the above action before the Florida Industrial Commission, Petitioner, on or about June 17, 1965, caused an additional unfair labor practice charge to be filed with the National Labor Relations Board claiming that her layoff was for union activity and, therefore, unlawful, and that she was entitled to immediate reinstatement with back pay for all wages lost (R.12).

No resolution on Petitioner's consolidated unfair labor practice charges was made by the National Labor Relations Board, but the Board of Review of the Florida Industrial Commission, in affirming the decision of the

Appeals Referee, found that Petitioner, by filing the unresolved unfair labor practice charges, dated June 17, was involved in an active labor dispute with Respondents and was not entitled to unemployment compensation during the period from June 17 to October 5, 1965 (R.33,40).

Thereafter, Petitioner filed a Petition for Certiorari in the District Court of Appeal of Florida, Third District, which petition was denied without opinion (R.49-50,58-59).

ARGUMENT

I.

THE DECISION OF THE BOARD OF REVIEW OF THE FLORIDA INDUSTRIAL COMMISSION AFFIRMING THE DISQUALIFICATION OF PETITIONER FROM RECEIVING UNEMPLOYMENT COMPENSATION BENEFITS BECAUSE SHE HAD FILED UNRESOLVED UNFAIR LABOR PRACTICE CHARGES WITH THE NATIONAL LABOR RELATIONS BOARD CHALLENGING HER LAYOFF DOES NOT CONSTITUTE AN ABRIDGMENT OF PETITIONER'S PRIVILEGES OR IMMUNITIES IN VIOLATION OF THE FOURTEENTH AMENDMENT.

Petitioner argues that the filing of charges with the National Labor Relations Board alleging an employer violation of the National Labor Relations Act is a privilege or immunity of national citizenship and that for Florida to disqualify her from receiving unemployment benefits for filing unfair labor practice charges is an

abridgment of her privileges and immunities because she is required to forebear exercising a right guaranteed by the Federal Constitution and such requirement does not serve a compelling state interest. An analysis of Petitioner's reasoning and supporting authorities clearly shows that her argument is both faulty and illogical and will not support the position she takes before this Court.

A. Filing an unfair labor practice charge is not a privilege and immunity of national citizenship.

Petitioner in her brief contends that the filing of unfair labor practice charges is a privilege or immunity of national citizenship because it is a means both of informing the Federal Government of a violation of its laws and of seeking the Federal Government's protection (Petitioner's Brief, P. 14). To support this conclusion she relies upon *Slaughter-House Cases*, 83 U.S. 36(1873) and *In re Quarles*, 158 U.S. 532 (1895). Neither of these cases is in point.[1]

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[1]The *Slaughter-House Cases, supra,* involved a charter creating a slaughter-house company and certain powers of the company conferred by the charter. The butchers of New Orleans attacked the charter and the powers conferred thereunder. The Supreme Court held that the privileges and immunities relied upon by the butchers were those belonging to citizens of the state and as such, were left to the state governments for protection. The Court excused itself from defining the privileges and immunities of citizens of the United States which no state can abridge, but did suggest that one has the right "to come to the seat of government to assert any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its function." (*Slaughter-House Cases, supra,* at P. 79). Respondent submits that the type of governmental rights referred to above are those rights guaranteed to all citizens of the United States. Since the

Both the *Slaughter-House* and the *Quarles* decision deal with rights of all citizens of the United States and rights that are exercisable by all citizens of the United States. Such rights were the only rights proposed by Congress in the amendments and such were the only rights ratified by the various state legislatures. *Slaughter-House Cases, supra.*

A brief examination of the National Labor Relations Act, as amended, clearly shows that no rights of national citizenship are involved nor did Congress intend that the filing of an unfair labor practice charge be a right of all citizens of the United States. The Act offers protection to "employees", *National Labor Relations Act,* Section 2(3), 29 U.S.C. § 152(3). The term "employees" refers to employees employed by an employer, and the employer must be found to be engaged in interstate commerce before the charge will be entertained. Therefore, some citizens and some non-citizens are protected by the Act and

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right to file an unfair labor practice charge is not a right enjoyed by all citizens of the United States, as will hereinafter be shown, the *Slaughter-House Cases, supra,* do not support Petitioner's position.

In the case of *In re Quarles,* 158 U.S. 532(1895), the Supreme Court approved the applicability of Section 5508 of the Revised Statutes for the punishment of a criminal conspiracy against a certain informer by those persons whom he informed against concerning their criminal violation of the Internal Revenue Laws of the United States. This Court therein emphasized both the duty of private citizens to furnish information to assist peace officers in prosecution of breaches of the peace of the United States and the rights of such citizens to have their information treated as a confidential and privileged communication and their persons protected from any conspiracy to injure, oppress, threaten or intimidate them.

Here again the right involved in *Quarles, supra,* is a right enjoyed by every national citizen. Therefore, it is distinguishable on that basis. Furthermore, the present case involves essentially private rights, namely, Petitioner's reinstatement to her job with back pay. No public duty relative to criminal laws of the United States is involved.

some citizens are not afforded its protection because certainly not all citizens are employees of employers engaged in interstate commerce.

Furthermore, the privileges and immunities guaranty in the Fourteenth Amendment was also intended to prevent or limit the powers of a state to exclude citizens of other states from the privileges granted to its own citizens *McPherson v. Blacker* 146 U.S.1(1892). Since Florida's disqualification from unemployment benefits under attack by Petitioner deals with "individuals" and not "citizens", "Florida residents" or "non-residents of Florida", there is additional reason for not applying privileges and immunities to the present case.

Respondents state that any decision based upon privileges and immunities, whether favorable or adverse, would be erroneous.

B. Disqualification from state unemployment benefits for filing an unfair labor practice charge is not arguably violative of the privilege and immunity clause of the Fourteenth Amendment.

After erroneously concluding that the right to file an unfair labor practice charge is a privilege and immunity of national citizenship, Petitioner next argues that Florida's rule disqualifying claimants from unemployment benefits if they do file unfair labor practice charges constitutes an abridgement of privileges and immunities of national citizenship in violation of the Fourteenth Amend-

ment.[2] Petitioner's argument in this regard must also fail.

Of course, if the right to file an unfair labor practice charge is not a right of national citizenship, then certainly there can be no violation of the privileges and immunities

[2]Petitioner cites numerous cases in this regard, none of which support her contention that the right to file an unfair labor practice is a privilege or immunity of national citizenship, and none of which lends support to her erroneous conclusion that the Florida rule of disqualification from benefits for filing such a charge abridges her privileges and immunities.

Petitioner cites the case of *Harmond v. Forssenieus*, 380 U.S. 528 (1965, which involved a Virginia statute that was held to violate the Twenty-Fourth Amendment because it imposed a material requirement upon citizens before they could vote in a federal election.

Next the case of *Lamont v. Postmaster General*, 381 U.S. 301 (1965) was cited. This case involved an Act of Congress which required the addressee of certain mail to request in writing that it be delivered, and this court found such requirement of the Federal Act to violate the First Amendment.

The case of *Frost v. Railroad Commission of California*, 271 U.S. 583 (1926), relied upon by Petitioner, involved a state statute requiring carriers to dedicate their property to the business of public transporation and subject themselves to the duties and burdens imposed by the Act upon common carriers. This was held to be violative of the due process clause of the Fourteenth Amendment.

Petitioner also cited *Speiser v. Randall*, 357 U.S. 513 (1958) which involved a state statute imposing the burden of proof upon the taxpayer to the effect that he did not advocate the overthrow of the government by force and violence before he could receive certain tax exemptions. This likewise was held to be violative of the due process clause.

Petitioner relies heavily upon the case of *Sherbert v. Verner*, 374 U.S. 398 (1963), apparently because this case involves an unemployment compensation statute of the State of South Carolina under which the claimant was disqualified from receiving benefits because she would not work on Saturday. This court held that such disqualification was unconstitutional since the claimant was a member of the Seventh-day Adventist Church and such a rule violated her First and Fourteenth Amendment rights.

Respondents contend that none of these cases support the position of Petitioner since they do not involve cases dealing with rights of national citizenship, and since the Fourteenth Amendment was not intended to increase the number of rights of national citizenship.

clause of the Fourteenth Amendment. That such is clearly the case has already been adequately demonstrated herein. However, since Petitioner attempts to draw support from the cases hereinabove distinguished in Footnote 2, Respondents feel it necessary to briefly comment on Petitioner's error in this regard.

Petitioner is apparently under the mistaken belief that the privileges and immunities clause of the Fourteenth Amendment makes all of the provisions contained in the First Ten Amendments and, in turn, all of the provisions contained in Federal statutes, operative within the states on the grounds that the rights contained therein, are, by virtue of the Fourteenth Amendment, to be regarded as privileges or immunities of citizens of the United States. The case of *Maxwell v. Dow*, 176 U.S. 581 (1900) clearly points out that such position is erroneous and untenable.

In that case the defendant claimed that to prosecute him by information rather than indictment and to try him with a jury of only eight persons instead of twelve abridged his privileges and immunities as a citizen of the United States under the Fifth and Sixth Amendments of the Constitution, and also violated section 1 of the Fourteenth Amendment. The Supreme Court rejected these contentions and said:

> "Is any one of the rights secured to the individual by the Fifth or by the Sixth Amendment any more a privilege or immunity of a citizen of the United States than are those secured by the Seventh? In none are they privileges or immunities granted and belonging to the individual as a

citizen of the United States, but they are secured to all persons as against the Federal government, entirely irrespective of such citizenship. As the individual does not enjoy them as a privilege of citizenship of the United States, therefore, when the Fourteenth Amendment prohibits the abridgement by the states of those privileges or immunities which he enjoys as such citizen, it is not correct or reasonable to say that it covers and extends to certain rights which he does not enjoy by reason of his citizenship, but simply because those rights exist in favor of all individuals as against Federal governmental powers. The nature or character of the right of trial by jury is the same in a criminal prosecution as in a civil action, and in neither case does it spring from nor is it founded upon the citizenship of the individual as a citizen of the United States, and if not, then it cannot be said that in either case it is a privilege or immunity which alone belongs to him as such citizen.

* * * *

In this case the privilege or immunity claimed does not rest upon the individual by virtue of his national citizenship, and hence is not protected by a clause which simply prohibits the abridgement of the privileges or immunities of citizens of the United States. Those are not distinctly privileges or immunities of such citizenship, where everyone has the same as against the Federal government, whether citizen or not.

* * * *

> The Fourteenth Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies." *Supra.*

Therefore, since the right to file an unfair labor practice charge does not arise by virtue of national citizenship, the Florida rule of disqualification from unemployment benefits cannot possibly constitute an abridgement of Petitioner's privileges and immunities guaranteed by the Fourteenth Amendment, and, if the Florida rule is to be found unconstitutional, other grounds must be advanced by Petitioner.

II.

THE DECISION OF THE BOARD OF REVIEW DISQUALIFYING PETITIONER FROM RECEIVING UNEMPLOYMENT BENEFITS HAS WARRANT IN THE RECORD AND REASONABLE BASIS IN LAW AND DOES NOT CONSTITUTE AN UNREASONABLE INFRINGEMENT UPON THE NATIONAL LABOR RELATIONS ACT, AND, THEREFORE, DOES NOT CONTRAVENE THE SUPREMACY CLAUSE.

In the last portion of her brief, Petitioner asserts that the decision of the Florida Board of Review seriously disrupts the operation of the National Labor Relations Board and the enforcement of the National Labor Relations Act, as amended, and therefore, runs afowl of the supremacy clause, Article VI, Clause 2 of the Federal Constitution. In support of her position in this regard,

Petitioner relies primarily upon the cases of *Davis v. Elmira State Bank*, 161 U.S. 275 (1895), and *Hill v. Florida*, 325 U.S. 538 (1945).

The *Davis* case, *supra*, involved two statutes, one federal and one state, both relating to insolvent banks and the right of preference concerning distribution of the remaining assets of the bank. The statutes were in direct conflict and this Court held that the federal statute prevailed.

In the *Hill* case, *supra*, this Court determined that a Florida statute imposing certain conditions upon unions and punishment for failure to comply with these conditions interfered with the type of collective bargaining Congress had authorized and was, therefore, repugnant to the National Labor Relations Act. Since both Acts could not "move freely within the orbit of their respective purposes without infringing upon one another", the Florida law was declared unconstitutional, *supra* at 543.

Respondents contend that neither of these decisions is helpful in furnishing guide lines in the present case. Rather, the enquiry here should be whether or not the ruling of the Board of Review frustrates the purpose of the National Labor Relations Act, as amended, to the extent that it should be struck down as unconstitutional and violative of the supremacy clause.

It is clear that a state has the authority to establish unemployment compensation acts by legislative enactment. In so doing, a state legislature has the power to determine the scope of the act and it need not occupy the whole field of unemployment. A legislature may lay down definitions

and tests to be applied in the administration of the statute, and these functions fall within a state's police power. 81 *C.J.S.* Social Security and Public Welfare, § 81.

> "In determining the validity of such legislation it is not for the court to determine the merits of the law as enacted by the legislature, or, provided the act has a legitimate end and the means are reasonably related to that end, to question the wisdom or workability of the scheme set up by the legislature, or to say that some plan other than that adopted by the legislature would be preferable, or that experience might demonstrate the economic fallacy of the particular plan promulgated."

> "Questions as to the manner of the operation of the act are legislative questions and ordinarily are not within the power of the court to consider and determining the validity of the act." *Id.* at 121.

In *Unemployment Compensation Commission v. Aragon*, 329 U.S. 143 (1946), this Court clarified the state's authority in interpreting and applying its unemployment compensation act, and the scope of appellate review of such state determinations.

> "Here, as in *National Labor Relations Board v. Hearst Publications, Inc.*, 1944, 322 U.S. 111, 131, 64 S.Ct. 851, 860, 861, 88 L. Ed. 1170, the question presented "is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute

must determine it initially.' To sustain the Commission's application of this statutory term, we need not find that its construction is the only reasonable one or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings. The 'reviewing court's function is limited.' All that is needed to support the Commission's interpretation is that it has 'warrant in the record' and a 'reasonable basis in law'. *(Citations omitted)*

Applying these tests, we are unable to say that the Commission's construction was irrational or without support in the record. The Commission apparently viewed a dispute as 'active' during the continuance of a work stoppage induced by a labor dispute. That agency might reasonably conclude that the unemployment resulting from such work stoppage is not of the 'involuntary' nature which the statute was designed to alleviate, as indicated by the statement of public policy incorporated in the Act by the Territorial Legislature. We see nothing in such a view to require our substituting a different construction from that made by the Commission entrusted with the responsibility of administering the statute'." *Id.* at 250, 251.

The North Carolina Supreme Court in *In Re Abernathy*, 130 S.E.2d 292 (N.C.Sup.1963), *cert. den.,app.dism.* 84 S.Ct. 274, 375 U.S. 161 (1963) stated:

" 'When the subject lies within the police power the the state, debatable questions as to reasonable-

> ness are not for the courts but for the Legislature, which is entitled to form its own judgment, and its action within its range of discretion cannot be set aside because compliance is burdensome,' *Sproles v. Binford*, 286 U.S. 374, 52 S.Ct. 581, 76 L.Ed.1167; .... 'Legislative bodies may distinguish, select, and classify objects of legislation. * * * They may prescribe different regulations for different classes * * *. The one requirement is that the ordinance must affect all persons similarly situated or engaged in the same business without discrimination.' ...; see also, ...; *Magoun v. Ill. Trust & Savings Bank*, 170 U.S. 283, 18 S.Ct. 594, 42 L.Ed. 1037;...; *Steward & Machine Co. v. Davis*, 301 U.S. 548, 57 S.Ct. 883, 81 L.Ed. 1279.' The unemployment insurance acts of the states contain certain worker disqualifications, among them, (1) discharge for misconduct, (2) refusal to accept other suitable employment, (3) participation in a strike. The power of the legislature to provide these disqualifications is not challenged. Further disqualifications contained in the 1961 amendment involves a question of degree and not of principle.' " *Id.* at 299.[3]

With these cases in mind, Respondents would state that the right to strike and/or picket are probably the working man's most basic tools in the process of self help in the effectuation of the rights guaranteed him under

[3]The Court in *Abernathy* held that the North Carolina Court's interpretation of its Unemployment Compensation Act, which is closely akin to Florida's, so that flight engineers who refused to cross picket lines at Employer's North Carolina operation were not eligible to receive unemployment compensation, was constitutional when tested by the Fourteenth Amendment of the Constitution of the United States.

Section 7 of the National Labor Relations Act, as amended. The right to engage in peaceful picketing has been equated to freedom of speech protected from unlawful abridgment by a state by the Fourteenth Amendment to the United States Constitution. *Thornhill v. State of Alabama*, 60 S.Ct. 736, 310 U.S. 88 (1940); *A.F.L. v. Swing*, 61 S.Ct. 568, 312 U.S. 321 (1940); *Bakery and Pastry Drivers & Helpers Local 802 International Brotherhood of Teamsters v. Wohl*, 62 S. Ct. 816, 315 U.S. 769 (1942); *Johnson v. White Swan Laundry*, 41 So.2d 874 (Fla.Sup.Ct. 1949). Further, there is no doubt but that the right to strike, so long as such right is exercised in a lawful manner, is entitled to protection under the Fourteenth Amendment from unreasonable infringement by a state. 16 *C.J.S.* Const. Law §213.

Although federal recognition and protection of such rights is generally accepted, the validity of state unemployment compensation acts which deny employees unemployment compensation benefits when their unemployment is due to participation in striking and/or picketing is almost universally recognized.[4]

By analogy, if a state may hold that an employee who is unemployed because he is participating in these constitutional freedoms may be denied unemployment benefits, it

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[4]*In Re Abernathy, supra; Aragon, supra; The Ruberiod Co. v. Unempl.* Ins. App., 50 LRRM 85 (Calif. Dist.Ct. App. 1962); *Gillan v. Admr. Unempl. Comp. Act.* 50 LRRM 86 (1962); *Achenbach v. Review Bd. of Indiana Empl. Comm'n. Div.*, 49 LRRM 112 (Ind.Sup. Ct. 1962); *Weltner of Kansas Empl. Sec. Bd. of Rev.*, 53 LRRM 98 (Kansas Sup.Ct. 1963); *Johnson v. Kentucky Unempl. Ins. Comm'n.*, 53 LRRM 100 (Ky.Ct. App. 1963); *Wheeler v. Director of Div. of Empl. Sec.* 56 LRRM 148 (Mass. Sup. Jud. Ct. 1964); *Weiss v. Klein Markets, Inc.*, 47 LRRM 90 (Minn. Sup. Ct. 1961); *O'Dell v. Division of Empl. Sec.*, 55 LRRM 131 (Mo. Sup.Ct. 1964); *Marczi v. Bd. of Education*, 46 LRRM 115 (N.J. Sup.Ct. App. Div. 1960), *ad infinitum*

follows that a state may hold that an employee may be denied unemployment compensation benefits because he filed an unfair labor practice charge with the National Labor Relations Board. Of course this is true only so long as such disqualification is applied uniformly to all persons similarly situated. Respondents submit that there is no reason to afford the "right" to file such charges more protection than the recognized right to strike and/or picket.

Such conclusion is further buttressed by the fact that the right to file unfair labor practice charges is created and protected by the same federal law that gives employees the right to strike and/or picket, *i.e.* The National Labor Relations Act, as amended. Consequently, Respondents contend that if a state may constitutionally deny unemployment compensation benefits to an employee who is engaged in striking and/or picketing, the State of Florida may constitutionally deny Petitioner unemployment compensation because she filed an unfair labor practice charge with the National Labor Relations Board.[5]

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[5]That the State of Florida may interpret Petitioner's unemployment to be due to a labor dispute in active progress because she filed an unfair labor practice charge with the National Labor Relations Board, and that such interpretation has "warrant in the record" and a "rational basis in the law", is apparent. In *Meyer v. Florida Industrial Commission*, 117 So.2d 216 (1960), the District Court of Appeal of Florida, Second District, said at page 219:

"As we understand the term "labor dispute" it includes any controversy between employer and employee concerning wages, hours, working conditions or terms of employment. When once a "labor dispute" begins, it remains in 'active progress' until it is finally settled, terminated or completely abandoned. *Unemployment Compensation Commissioner of Territory of Alaska v. Aragon*, 329, U.S. 143 (other citations omitted). "In the present case the 'active progress' of the labor dispute did not terminate on September 9, 1958, when the Union called off the strike, removed the picket line, and voted to release the petitioner [Meyer] for re-employment, for this action by the union merely amounted to our abandonment of certain activities which were being employed by the union to force the employer to accede to the

The underlying reasons for allowing claimants to be disqualified from receiving unemployment benefits when they are engaged in strikes is to allow the state to remain neutral in such a labor dispute and not favor either party by financial aid and to prevent the benefits disbursed out of funds accumulated through employer contributions from being, in effect, an employer subsidization of the unemployed employee.

Certainly there is no good reason for advancing these principles in cases involving strikes and rejecting them in this case where Petitioner, by filing an unfair labor practice charge, contends that the employer-employee relationship still exists since her termination was for union activity, and, therefore, unlawful. Shall the State of Florida be required to render financial aid and shall the employer be, in effect, required to subsidize the Petitioner in this instance and not in a strike situation? Does it follow that denying unemployment benefits does not in-

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demands which were the basis of the claim out of which the labor dispute arose. *It was not an abandonment of the labor dispute* itself, because at the time the decision was made by the union to call off the strike and release the petitioner for re-employment, *the claim out of which the labor dispute arose was pending before the National Labor Relations Board,* and, indeed, remained pending up through the date of the final decision by the Florida Unemployment Compensation Board of Review. And it is conceded by the parties to this proceeding that when the National Labor Relations Board hands down its decision it may, *'if it upholds the contentions of the petitioner, represented by her union, require the employer to pay back wages for time lost from the job and reinstate the petitioner to her former employment. It is our view that the labor dispute which, manifestly, was of direct interest to the petitioner and was one in which she was participating, was in 'active progress' within the meaning of [F.S. 443.06 (4)], throughout the whole period for which she was denied unemployment compensation benefits* by the Florida Unemployment Compensation Board of Review.

This is obviously the decision relied upon by the Board of Review and is clearly not so unreasonable as to render it invalid.

terfere with Petitioner's right to strike but it does interfere with her right to file charges to the extent that the processes of the National Labor Relations Board are materially impaired? Clearly, there is neither a basis or a need for such distinctions.

CONCLUSION

Certainly, no more inspiring words can be found in English and American Jurisprudence than those contained in the ancient maxim "for every wrong there is a remedy". Petitioner, however, asks this Court to reject the ruling of the Board of Review herein which rejection by this Court would give Petitioner and certain other employees the right to draw unemployment compensation from the state and also seek reinstatement and back pay through a federal agency. In other words, Petitioner is asking for a double remedy which could, in turn, lead to a double recovery, except in those instances where the State of Florida was willing to step in and file a suit for recoupment of unemployment benefits if a back pay award was also received. Whatever may be said in favor of the decision of this Court in *National Labor Relations Board v. Gullet Gin Co.*, 340 U.S. 361 (1951), authorizing recoupment by the state in such cases, no sound reason exists for expanding the remedies of Petitioner herein, thereby creating possible situations where three instances of litigation by an individual, the state and the federal government could arise. The refusal of unemployment benefits while an unfair labor practice charge is pending clearly does not interfere with the enforcement of the National Labor Relations Act, as amended, to the extent

that the Florida rule attacked herein should be declared unconstitutional. Accordingly, the decision below should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three (3) true and correct copies of the foregoing Brief were served by prepaid airmail upon the following Attorneys for Petitioner:

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